IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITIONS NO.70/2006, 71/2006, 72/2006 AND 73/2006.

WRIT PETITIONS NO.70/2006,

Pradip P. Mahatme,
s/o. Prabhakar Mahatme,
r/o. Altinho, Panaji, Goa
Power of Attorney of
Mrs. Julia Marie Pinto Morpeth. ..... Petitioner.

V/s.

1. Asst. Commissioner of Income-tax
   Circle 2, Margao, Goa.

2. Joint Commissioner of Income-tax
   Margao Range, Margao, Goa. ..... Respondents.

WRIT PETITIONS NO.71/2006

Pradip P. Mahatme,
s/o. Prabhakar Mahatme,
r/o. Altinho, Panaji, Goa
Power of Attorney of
Mrs. Lorna Margaret Pinto . ..... Petitioner.

V/s.

1. Asst. Commissioner of Income-tax
   Circle 2, Margao, Goa.

2. Joint Commissioner of Income-tax
   Margao Range, Margao, Goa. ..... Respondents.

WRIT PETITION NO. 72/2006

Pradip P. Mahatme,
s/o. Prabhakar Mahatme,
r/o. Altinho, Panaji, Goa
Power of Attorney of:

a) Mrs. Siobhan Mary Jasper,

b) Mrs. Julia Marie Pinto Morpeth.

c) Mrs. Lorna Margaret Pinto,
heirs of deceased Mrs. Margaret
Mary Pinto. ..... Petitioners.

V/s.

1) Asst. Commissioner of Income-tax
Circle 2, Margao, Goa.

2) Joint Commissioner of Income-tax
Margao Range, Margao, Goa. ..... Respondents.

WRIT PETITION NO.73/2006

Pradip P. Mahatme,
s/o. Prabhakar Mahatme,
r/o. Altinho, Panaji, Goa
Power of Attorney of
Mrs. Siobhan Mary Jasper ..... Petitioner.

V/s.

1) Asst. Commissioner of Income-tax
Circle 2, Margao, Goa.

2) Joint Commissioner of Income-tax
Margao Range, Margao, Goa. ..... Respondents.

Mr. R. Srinivasan with Mr. Sudin M. S. Usgaonkar, Advocates for the petitioner.

Mr S. R. Rivonkar, Advocate for the respondents.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Order :
21/03/2006.

Date of pronouncing the Order :
27/03/2006.

O R D E R : (Per LAVANDE, J.)

Heard Mr. Srinivasan, the learned Counsel for the petitioner and Mr. Rivonkar, the learned Counsel for the respondents.

2. All the above writ petitions are being disposed of by this common order since the facts as well as the issues of law involved in these petitions are almost identical.

3. The petitions have been filed by Shri Pradip P. Mahatme, as the constituted Attorney of Mrs. Julia Marie Pinto Morpeth, Mrs. Lorna Margret Pinto and Mrs. Siobhan Mary Jasper. (hereinafter, referred to as the “NRI Assessees”.) challenging the order passed by the respondents under Sections 142, 144 and 148 of the Income Tax Act, 1961 (“the Act” for short), in relation to the Assessment Year 1999-2000. The challenge to the notices is mainly on the ground that the petitioner-Pradip Mahatme is sought to be assessed as an “agent” of the NRI Assessees and, therefore, the notice issued to each of the Assessees under Section 148 is barred under Section 149(3) of the Act since the same has been issued after the expiry of the period of two years from the end of the relevant assessment year. Admittedly, the notices have been issued in the year 2005 in respect of the Assessment Year 1999-2000.

4. Mr. Srinivasan, the learned Counsel appearing on behalf of the petitioners submitted that the petitioner-Pradip Mahatme is sought to be assessed as an agent of the NRI Assessees in respect of the Assessment Year 1999-2000 and since the notices have, admittedly, been issued after expiry of the period of 2 years, the same are without jurisdiction inasmuch as the period of two years has elapsed from the end of the Assessment Year 1999-2000 and, therefore, the notices are barred under Section 149(3) of the Act and, as such, deserves to be quashed and set aside. In support of his submission, the learned Counsel relied upon the Judgment of the Madras High Court in **Commissioner of Income-Tax v. S. G. Sambandam and Co.** 2000 (Vol.242) ITR 708. The learned Counsel for the petitioner further submitted that the income which the respondents claim to have escaped assessment is not liable to be taxed since the same cannot be termed as income under the Act. The learned Counsel, in support of his submission, relied upon a decision of the Apex Court in **Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate,** AIR 1997 SC 998. The learned Counsel further submitted that since the notices issued by the respondents are without jurisdiction, the same deserve to be quashed by this Court in its exercise of writ jurisdiction inasmuch as in the event the same are not quashed, the petitioner will be put to

unnecessary proceedings and harassment. In support of his submission, reliance has been placed upon the Judgment of the Apex Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and ors.,** (1998) 8 SCC 1.

5. Per contra, Mr. Rivonkar, the learned Counsel appearing on behalf of the respondents, placing reliance upon the affidavit filed by respondent No.1, submitted that it is the case of the respondents that the notice under Section 148 has been issued not in his individual capacity, but as the constituted attorney of the NRI Assessees since the petitioner had filed and verified the returns of the NRI Assessees for the Assessment Years 2002-2003 to 2004-2005 as an attorney of the said NRI Assessees. According to the learned Counsel, the notices have been issued in respect of the income of the NRI Assessees which has escaped the assessment and not income of the petitioner -Pradip Mahatme. The learned Counsel further submitted that the reassessment in respect of the NRI Assessees is not barred under Section 149(3) of the Act and the notices issued to the NRI Assesses cannot be said to be without jurisdiction. In support of his submission, he relied upon the following Judgments:

(1) Claggett Brachi Co. v. Commissioner of Income Tax, (1989) 177 ITR 0409 (SC);

(2) Crompton Greaves Ltd. v. Mrs. A.K. Jain IAC of

IT & ors., (1990) 185 ITR 0513 (BOM); and

(3)Commissioner of Income Tax, Kerala v. Cochin Co. (P) Ltd., (1976) 104 ITR 0655 (KER).

According to the learned Counsel, the proper course is to file returns of NRI Addressees in view of the ratio laid down by the Apex Court in the case of **Gkn Driveshafts (India) Ltd. v. Income-Tax Officer and ors.,** 259 ITR 19. He further submitted that the NRI Assesses are liable to pay tax in respect of the sum of Rs.5,50,00,000/- which they were entitled to receive from one Shri Jose Cristovam Pinto in terms of the consent decree dated 17.4.1998 passed by the Civil Judge, Sr. Division, Panaji in Special Civil Suit No.255/92/A. According to the learned Counsel, the amount so received is chargeable to tax as per the provisions of Section 9(1)(i) of the Act.

6. We have considered the submissions made on behalf of the learned Counsel for the parties. Having regard to the rival submissions, it would be necessary to decide first whether the notices have been issued to the petitioner as an agent of the NRI Assessees as contended by the learned Counsel for the petitioner or the notices have been issued to the petitioner-Pradip Mahatme as duly constituted Attorney of the NRI Assessees and not as agent of the NRI Assessees ? A bare perusal of the notices dated 14.3.05 issued under

Section 148 of the Act discloses that the said notices have been issued to the NRI Assessees in respect of their income for the Assessment Year 1999-2000 which, according to the respondents, has escaped assessment within the meaning of Section 148 of the Act. We find considerable merit in the submission of the learned Counsel for the respondents that the notices have been issued to the petitioner as duly constituted attorney and not as agent of the NRI Assessees. The petitioner cannot be terms as "agent" in terms of Section 163 of the Act. Admittedly, the petitioner had filed the returns on behalf of the NRI Assessees for the Assessment Year 2002 to 2005 as duly constituted attorney pursuant to the Power of Attorney dated 23.11.1993 executed by the NRI Assessees in his favour. Therefore, we are unable to accept the submission on behalf of the petitioner that the notices issued under Section 148 are barred under Section 149 (3) of the Act. Therefore the contention of the petitioner that the notices issued under Section 148 are barred under Section 149(3) of the Act cannot be accepted. The ratio of the Judgment in **Commissioner of Income-Tax v. S. G. Sambandam and Co. (supra)** relied upon by the learned Counsel for the petitioner is not attracted since the fact situation in the cases before us is clearly different.

7. In so far as the submission of Mr. Srinivasan that the amount which the NRI Assessees is entitled to receive in terms of the

consent decree is not liable to be taxed since there is no transfer within the meaning of Section 2(47) and, therefore, the same cannot be treated as income by way of capital gains is concerned, we deem it not necessary to deal with the same since the challenge to the notices issued by the respondents is not tenable. We find considerable merit in the submission of Mr. Rivonkar that the proper course of action would be to file returns as laid down by the Apex Court in **Gkn Driveshafts (India) Ltd. (supra).**

8. In the light of the above discussion, we do not find any merit in these petitions. Therefore, petitions are rejected.

Mr. Srinivasan, learned Counsel appearing for the petitioner submits that the impugned orders may be stayed as the petitioner desires to file Special Leave Petition to the Supreme Court. We do not find any merit in the submission made by the learned Counsel for the petitioner. No case is made out for stay of the impugned orders. Hence, the prayer is rejected.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.